

§ 304.6

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government activity, if made by a person primarily engaged in disseminating information; or

(iii) Other circumstances as determined by the agency.

(2) A request for expedited processing may be made at the time of the initial request for records (i.e., as part of the initial request) or at any later time.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within the category in paragraph (d)(1)(ii) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. That requester also must establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally. The formality of certification may be waived by the agency as a matter of administrative discretion.

(4) Within ten calendar days of its receipt of a request for expedited processing, the agency will decide whether to grant it and will notify the requester of the decision. If a request for expedited treatment is granted, then the request will be given priority and will be processed as soon as practicable. If a request for expedited processing is denied, then any appeal of that decision will be acted on expeditiously.

§ 304.6 Responses to requests.

(a) *Acknowledgments of requests.* On receipt of a request, if the agency cannot provide the requested information within two business days, then an acknowledgment letter or e-mail message will be sent to the requester that will confirm the requester's agreement to pay fees under § 304.3(c) and will provide a request tracking number for further reference. Requesters may use this tracking number to determine the status of their request—including the date of its receipt and the estimated date on

which action on it will be completed—by calling the agency's FOIA Public Liaison at (202) 480-2080. In some cases, the agency may seek further information or clarification from the requester.

(b) *Grants of requests.* Ordinarily, the agency will have twenty business days from when a request is received to determine whether to grant or deny the request. Once the agency makes such a determination, it will immediately notify the requester in writing. The agency will inform the requester in the notice of any fee charged under § 304.9 and will disclose records to the requester promptly upon payment of any applicable fee. Records disclosed in part will be marked or annotated to show the amount of information deleted, unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted also will be indicated on the record, if technically feasible.

(c) *Adverse determinations of requests.* Whenever the agency makes an adverse determination denying a request in any respect, it will notify the requester of that determination in writing. Adverse determinations, or denials of requests, consist of: A determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that a record is not readily reproducible in the form or format sought by the requester; a determination that what has been requested is not a record subject to the FOIA; a determination on any disputed fee matter, including a denial of a request for a fee waiver; and a denial of a request for expedited treatment. The denial letter will include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason(s) for the denial, including any FOIA exemption(s) applied by the agency in denying the request;

(3) An estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate

would harm an interest protected by an applicable exemption; and

(4) An indication on the released portion of a record of each exemption applied, at the place at which it was applied, if technically feasible.

(5) A statement that the denial may be appealed under §304.8(a) and a description of the requirements of §304.8(a).

§ 304.7 Business information.

(a) *In general.* Business information obtained by the agency will be disclosed under the FOIA only under this section and in accordance with Executive Order 12,600, 3 CFR part 235 (1988).

(b) *Definitions.* For purposes of this section:

(1) “Business information” means privileged or confidential commercial or financial information obtained by the agency from a submitter that may be protected from disclosure under Exemption 4 of the FOIA.

(2) “Submitter” means any person or entity from whom the agency obtains business information, either directly or indirectly. The term includes corporations; state, local, and tribal governments; and foreign governments.

(c) *Designation of business information.* A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any and all portion(s) of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(d) *Notice to submitters.* The agency will provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its business information wherever required under paragraph (e) of this section, except as provided in paragraph (h) of this section, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information under paragraph (f) of this section. The notice will either describe the business information requested or include copies of the requested records or record portions containing the infor-

mation. When notification of a voluminous number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish it.

(e) *Where notice is required.* Notice will be given to a submitter wherever:

(1) The information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(2) The agency has reason to believe that the information may be protected from disclosure under Exemption 4.

(f) *Opportunity to object to disclosure.* The agency will allow a submitter a reasonable time to respond to the notice described in paragraph (d) of this section and will specify that time period within the notice. If a submitter has any objection to disclosure, it is required to submit a detailed written statement. The statement must specify all grounds for withholding any portion of the information under any exemption of the FOIA and, in the case of Exemption 4, it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond to the notice within the time specified in it, the submitter will be considered to have no objection to disclosure of the information. Information provided by the submitter that is not received by the agency until after its disclosure decision has been made will not be considered by the agency. Information provided by a submitter under this paragraph may itself be subject to disclosure under the FOIA.

(g) *Notice of intent to disclose.* The agency will consider a submitter’s objections and specific grounds for non-disclosure in deciding whether to disclose business information. Whenever the agency decides to disclose business information over the objection of a submitter, it will give the submitter written notice, which will include:

(1) A statement of the reason(s) why each of the submitter’s disclosure objections was not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date, which will be a reasonable time subsequent to the notice.